FILE COPY

Supreme Court, U.S.
FILED
OCT 4 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 72-5431

RAYMOND N. ORTWEIN and GWENDOLYN FAUBION,

Appellants,

versus

HERBERT M. SCHWAB, VIRGIL LANGTRY, ROBERT H. FOLEY, WILLIAM S. FORT, and ROBERT Y. THORNTON, individually and in their capacities as Judges of the Court of Appeals of the State of Oregon; LOREN D. HICKS, individually and in his capacity as State Court Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF OREGON

~~MOTION FOR LEAVE TO FILE BRIEF~~ AND BRIEF AMICUS CURIAE OF LEGAL SERVICES FOR THE ELDERLY POOR

JURIS. STATEMENT NOT PRINTED.
RESPONSE NOT PRINTED

E. JUDSON JENNINGS
JONATHAN A. WEISS
Legal Services for the Elderly Poor
2095 Broadway
New York, N. Y. 10023
Tel. (212) 595-1340
Amicus Curiae on Behalf of Appellants

IN THE

Supreme Court of the United States

No. 72-5431

RAYMOND N. ORTWEIN and GWENDOLYN FAUBION,

Appellants,

versus

HERBERT M. SCHWAB, VIRGIL LANGTRY, ROBERT H. FOLEY, WILLIAM S. FORT, and ROBERT Y. THORNTON, individually and in their capacities as Judges of the Court of Appeals of the State of Oregon; LOREN D. HICKS, individually and in his capacity as State Court Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF OREGON

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Legal Services for the Elderly Poor hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The interest of Legal Services for the Elderly Poor in this case arises from the fact that it is a project funded by the United States Office of Economic Opportunity to provide legal counsel and assistance to attorneys across the United States who are representing elderly persons who are destitute. Recent legislative studies show that over one-third of the persons over age 65 in this country are below the poverty level, and that another 10 percent are on the border line of poverty. For these people, the imposition

of court costs that cannot be paid constitutes an insurmountable barrier to litigation, with the result that many elderly people with just claims are denied an opportunity to be heard.

Legal Services for the Elderly Poor believes that this case is crucial in the determination of the attitude this court will take in the extension of the principles set forth in *Boddie* v. *Connecticut*, 401 U.S. (1971) to indigent persons seeking relief from the state courts. It is believed that the attached brief will focus for the court the extent and scope of this problem as it affects the indigent elderly citizens of this nation.

Respectfully submitted,

E. Judson Jennings
Jonathan A. Weiss
Legal Services for the
Elderly Poor
2095 Broadway
New York, N. Y. 10023
Tel. (212) 595-1340

September 29, 1972

INDEX

PAGE

Interest of the *Amicus* 1

POINT 1:

The Right of Poor Persons to Access to the Courts Has Deep Common Law Antecedents, Is Grounded in the Common Law of the United States and Is Binding Upon the State Courts 2

POINT 2:

The Denial of Poor Persons' Access to the Courts Solely Because They Cannot Pay Costs Constitutes an Unconstitutional Restraint Upon the Exercise of a Fundamental Right in Violation of the Due Process Clause of the Fourteenth Amendment 3

POINT 3:

The Denial of Poor Persons' Access to the Courts Solely Because They Cannot Pay Costs Is a Denial of Due Process Under Evolving Doctrines of Fundamental Fairness 5

POINT 4:

The Denial of the Right to Sue to Those Who Cannot Afford to Pay Court Costs Is a Denial of Equal Protection of the Laws, Under the "Compelling State Interest" Test or Under the "Ordinary" Test of Equal Protection 7

PAGE

POINT 5:

Free Access to the Court Is a Fundamental Concept of Ordered Democracy 9

CONCLUSION 11

TABLE OF CASES

Argersinger v. Hamlin, —— U.S. ——, 32 L.Ed.2d 530 (1972) 5

Bates v. Little Rock, 361 U.S. 516 (1960) 7-8
Boddie v. Connecticut, 401 U.S. 371 (1971) 6, 7
Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1 (1964) 3
Burns v. Ohio, 360 U.S. 252 (1959) 8

Douglas v. City of Jeannette, 319 U.S. 157 (1943) 4

Gideon v. Wainwright, 372 U.S. 335 (1963) 5
Goldberg v. Kelly, 397 U.S. 254 (1970) 6
Griffin v. Illinois, 351 U.S. 12 (1955) 8

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966) 7
Hickey v. Rhine, 16 Tex. 577 (1856) 3
Hotel Martha Washington v. Swinick, 66 Misc. 2d 833 (N.Y. App. Term 1971) 8

In Re Gault, 387 U.S. 1 (1967) 5

Johnson v. Avery, 393 U.S. 483 (1969) 8

PAGE

Martin v. Superior Court, 176 Cal. 289 (1917) 3
Matter of Ella R. B. (Kurtis), 30 N.Y.2d 352 (1972) 5
Meltzer v. C. Buck LeCraw & Co., 402 U.S. 954 (1972) .. 3, 4, 8
McClenahan v. Thomas, 6 N.C. (Murph.) 247 (1813) 3
McGoldrick v. Berwind-White Co., 309 U.S. 33 (1940) .. 4
Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105 (1943) 4

NAACP v. Button, 371 U.S. 415 (1963) 4

Pierce v. Society of Sisters, 268 U.S. 510 (1928) 4
Powell v. Alabama, 287 U.S. 45 (1932) 5
Prince v. Massachusetts, 321 U.S. 158 (1944) 4

Schneider v. State, 308 U.S. 147 (1939) 4
Shapiro v. Thompson, 394 U.S. 618 (1969) 7
Smith v. Bennett, 365 U.S. 708 (1961) 8
Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) 6

Williams v. Shaffer, 385 U.S. 1037 (1967) 8

Yick Wo v. Hopkins, 118 U.S. 356 (1875) 7

IN THE

Supreme Court of the United States

No. 72-5431

RAYMOND N. ORTWEIN and GWENDOLYN FAUBION,

Appellants,

versus

HERBERT M. SCHWAB, VIRGIL LANGTRY, ROBERT H. FOLEY, WILLIAM S. FORT, and ROBERT Y. THORNTON, individually and in their capacities as Judges of the Court of Appeals of the State of Oregon; LOREN D. HICKS, individually and in his capacity as State Court Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF OREGON

BRIEF *AMICUS CURIAE* OF LEGAL SERVICES FOR THE ELDERLY POOR

Interest of the *Amicus*

Legal Services for the Elderly Poor is funded by the Office of Economic Opportunity and sponsored by the Presbyterian Senior Services. This project provides assistance in research and litigation to legal services and other organizations serving the elderly.

The project appeared before this Court in *Messer* v. *Richardson,* 400 U.S. 987 (1970); and as *amicus curiae* in *Richardson* v. *Perales,* 402 U.S. 389 (1971); *Allied Chemical*

Workers v. *Pittsburgh Plate Glass Co.*, 404 U.S. 107 (1971); and *Graham* v. *Richardson*, 403 U.S. 365 (1971).

Recent statistics prepared by the Special Committee on Aging of the United States Senate indicate that about one-third of the 20 million persons aged 65 and older in the United States live in poverty; an additional one-tenth are on the poverty borderline. The elderly project has a continuing concern with questions involving the administration of courts which deny the needy elderly access because they cannot pay court costs.

POINT 1

The Right of Poor Persons to Access to the Courts Has Deep Common Law Antecedents, Is Grounded in the Common Law of the United States and Is Binding Upon the State Courts.

In 1215, King John signed Magna Carta, guaranteeing to his subjects:

> "No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, *or in any way destroyed,* nor will we pass upon him . . . unless by the lawful judgment of his peers, or by the law of the land. To none will we sell, to none will we deny, or delay, right or justice." §§39, 40.

This right to access to the ordinary Anglo-Saxon courts of public justice regardless of poverty was observed in practice during the period following the signing of Magna Carta. Pollock & Maitland, *The History of English Law*, 2d Ed. (1899), pp. 39-40. The practice of waiving court

fees for poor persons was codified by the Statute of 11 Henry VII c. 12 (1495), 2 Statutes of the Realm 578.

State courts have asserted their inherent power to grant poor persons access to the courts without payment of fees, based upon these English common law precedents. *McClenahan* v. *Thomas,* 6 N.C. (Murph.) 247 (1813); *Hickey* v. *Rhine,* 16 Texas 577 (1856); *Martin* v. *Superior Court,* 176 Cal. 289 (1917) (*en banc*).

Surely Justice Black was correct when he stated that the United States of America can and should afford to open the doors of their courts to those unable to pay the fees. *Meltzer* v. *C. Buck LeCraw & Co.,* 402 U.S. 954 (1972) (Black, J., dissenting from the denial of certiorari). The fundamental tradition of the English Common Law, dating back nearly eight hundred years, cannot be now cast aside by this Court.

POINT 2

The Denial of Poor Persons' Access to the Courts Solely Because They Cannot Pay Costs Constitutes an Unconstitutional Restraint Upon the Exercise of a Fundamental Right in Violation of the Due Process Clause of the Fourteenth Amendment.

The First Amendment rights of freedom of speech and association include the right to form an association to aid individual members in achieving justice in the courts and the recovery of civil damages. In *Brotherhood of Railroad Trainmen* v. *Virginia,* 377 U.S. 1 (1964), this court held that "The right to petition the courts cannot be handicapped." *Id.,* at p. 7. Further, the association of indi-

viduals for the purpose of establishing rights by litigation ". . . may be the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP* v. *Button,* 371 U.S. 415 (1963). See also *Meltzer* v. *C. Buck LeCraw & Co., supra,* Black, J., dissenting from the denial of certiorari.

First Amendment Rights are binding upon the States under the due process clause of the Fourteenth Amendment. *Douglas* v. *City of Jeannette,* 319 U.S. 157 (1943); *Prince* v. *Massachusetts,* 321 U.S. 158 (1944); *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1928); *Schneider* v. *State,* 308 U.S. 147, 160 (1939).

The imposition of court costs upon those unable to pay them prevents them from exercising a right guaranteed by the Constitution. Such a practice flies directly in the face of this court's holding that "A state may not impose a charge for the enjoyment of a right granted by the federal constitution." *Murdock* v. *Commonwealth of Pennsylvania,* 319 U.S. 105, 113 (1943). To the same effect, see *McGoldrick* v. *Berwind-White Co.,* 309 U.S. 33 (1940).

Accordingly, the imposition of court costs and the denial of access to the courts for failure to pay them is a violation of due process.

POINT 3

The Denial of Poor Persons' Access to the Courts Solely Because They Cannot Pay Costs Is a Denial of Due Process Under Evolving Doctrines of Fundamental Fairness.

Due process is a fluid and expanding concept, changing with the development of society. This court has constantly expanded in the last thirty years the class of cases in which the government has an affirmative duty to provide a person with some aid in litigation which is necessary to a minimally fair determination but which that person could not afford to provide for himself. *Powell* v. *Alabama,* 287 U.S. 45 (1932) required the appointment of counsel in a capital case for young, inexperienced and frightened defendants. *Gideon* v. *Wainwright,* 372 U.S. 335 (1963) extended this right to felony defendants. *In Re Gault,* 387 U.S. 1 (1967), extended it to defendants in juvenile proceedings where long term incarceration could result. *Argersinger* v. *Hamlin,* —— U.S. ——, 32 L.Ed.2d 530 (1972) extended it to misdemeanor defendants. And the New York Court of Appeals has extended the right to parents who may lose custody of their children in a neglect proceeding. *Matter of Ella R. B. (Kurtis),* 30 N.Y.2d 352 (1972). In *Gault, supra,* this court expressed an unwillingness to be bound by labels of "civil" or "criminal" in evaluating the fundamental fairness of the proceeding, looking instead to the practical result.

This court has recognized that welfare recipients, because of their extreme economic distress, must not be subject to summary action in determinations of benefits. In

cases involving complete termination of assistance, due process requires a hearing prior to withdrawal of aid. *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). Wage earners, at the bottom of the economic ladder of those employed, are entitled to a hearing prior to court sanctioned attachment of their earnings. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969).

Last term, this court, in holding that due process of law requires that indigent persons seeking divorces must not be deprived of the right to sue solely because they cannot pay the filing fee, stated:

> "Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard."

Boddie v. *Connecticut*, 401 U.S. 371, 377 (1971).

Further,

> "Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard." *Id.* at p. 380.

In the case at bar, appellants allege that they have been wronged by the department of welfare of their state. They are in desperate economic straits. There is no other way in which they can exert leverage to force the department

to settle the dispute. If they are to be vindicated at all, they must resort to the courts. To deny them that right is to deny them all relief. Clearly this case is within the mandate of *Boddie* v. *Connecticut, supra.*

POINT 4

The Denial of the Right to Sue to Those Who Cannot Afford to Pay Court Costs Is a Denial of Equal Protection of the Laws, Under the "Compelling State Interest" Test or Under the "Ordinary" Test of Equal Protection.

Discrimination against a disadvantaged minority is unconstitutional. *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1875). This court has consistently struck down legislation which discriminates against poor persons to deprive them of a fundamental right:

> "We do not stop to canvass the relationship between voting and political expression. For it is enough to say that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."

Harper v. *Virginia Board of Elections,* 383 U.S. 663, 665 (1966). The mandatory court costs in this case encroach upon the constitutional rights of freedom of speech, freedom to petition the government for redress of grievances, and the right to be heard, all guaranteed by the Fourteenth Amendment. Thus the statutory provision must be subjected to special scrutiny, and can be justified only upon the showing of a compelling state interest. *Shapiro* v. *Thompson,* 394 U.S. 618 (1968); *Bates* v. *Little Rock,* 361

U.S. 516 (1960). A criminal defendant who is prevented from obtaining an adequate appellate record because he cannot pay court costs is denied Equal Protection of the laws. *Griffin* v. *Illinois,* 351 U.S. 12 (1955). So is a state prisoner who is precluded by inability to pay filing fees from taking a state appeal. *Burns* v. *Ohio,* 360 U.S. 252 (1959); or from bringing a habeas corpus proceeding. *Smith* v. *Bennett,* 365 U.S. 708 (1961). See *Johnson* v. *Avery,* 393 U.S. 483 (1969).

Individual Justices of this Court have taken the position that all such economic discrimination is unconstitutional. See in addition to cases cited above, *Williams* v. *Shaffer,* 385 U.S. 1037 (1967) (Douglas, J., dissenting from the denial of certiorari). At least one state court has extended this doctrine to the appointment of counsel and waiver of fees in defending an eviction suit. *Hotel Martha Washington* v. *Swinick,* 66 Misc. 2d 833 (App. Term, 1st Dept., N.Y. 1971).

This Court should adopt the position expounded by the late Justice Black in his dissent from the denial of certiorari in *Meltzer* v. *C. Buck LeCraw & Co., supra*:

> "... [T]he decision in *Boddie* v. *Connecticut* can safely rest on only one crucial foundation—that the civil courts of the United States and each of the states belong to the people of this country and that no person can be denied access to those courts, either for a trial or an appeal, because he cannot pay a fee, finance a bond, risk a penalty or afford to hire an attorney." *Id.* at pp. 955-56.

POINT 5

Free Access to the Court Is a Fundamental Concept of Ordered Democracy.

The appellant and *amicus* have cited a number of cases to demonstrate that access to the Court historically has been deemed open to all and that the right of citizens for free access to the Courts has been recently recognized as constitutionally required by a range of decisions both criminal and civil. This case involving, as it does, the imposition of a financial burden upon judicial review, is controlled by these decisions, but *amicus* should like to urge this Court to consider the rationale that subtends these cases. A few basic principles, perhaps obvious but too important to be cliches, determine the importance and outcome of this case. Courts grew up as a peaceable method of settling disputes: it is far better to resolve an altercation in the Halls of Justice with an impartial arbiter than to leave it to superior forces displayed in combat in the streets. With taxes citizens pay for light, garbage collection, highways, airport construction and other programs—and with taxes, as Justice Oliver Wendell Holmes once remarked, we pay for civilization. The hallmark of American democratic civilization has always been a living doctrine of equal protection and justice. Equal protection and justice can only be achieved if people have access to the Courts. Only with equal access to the Courts to correct abuses can the promise of an ordered democracy bringing justice to all be fulfilled.

This Court has declared the right to counsel—and thereby given concrete meaning to the doctrine of equal protection

—by allowing he who is oppressed not only by poverty but also by the awesome resources available to his prosecutorial adversary to have his own lawyer. So, too, is it constitutionally crucial for those who have no means or strength to combat the oppression of the slum landlord, the merchants of deceit, and the lawlessness in administrative agencies to have access to the impartial tribunal of the Courts in order to receive some measure of protection and redress. Courts exist to channel disputes into the appropriate fair peaceful tribunal. Equal protection refers all to the Courts for resolution of disputes with an equal chance of success independent of their wealth, status, race, sex or prestige. Justice, therefore, demands that when there is an imposition of a fee for access to the Courts or for an appeal which by its financial burden diminishes the possibility of recourse to the Court and prevents the poor from having a chance to present their own case or redress a grievance, then that unfair, undemocratic, and unconstitutional burden must be struck down as void under the Constitution. The cases that *amicus* discussed above which dispose of the case indicate this rationale: the fundamental tenets of democracy and the jurisprudential structure of American constitutional decisions dictate the result in this case.

CONCLUSION

For all of the foregoing reasons, this Court should set this appeal for oral argument and reverse the judgment of the court below.

Respectfully submitted,

E. JUDSON JENNINGS
JONATHAN A. WEISS
Legal Services for the
Elderly Poor
2095 Broadway
New York, N. Y. 10023
Tel. (212) 595-1340
Amicus Curiae on Behalf
of Appellants

ORTWEIN ET AL. *v.* SCHWAB ET AL.

APPEAL FROM THE SUPREME COURT OF OREGON

No. 72-5431. Decided March 5, 1973

Appellants challenge the constitutionality of a $25 filing fee, which they were allegedly unable to pay, required to be paid in the state appellate court where they sought review of agency determinations resulting in their receiving reduced welfare payments. *Held:* Appellants were not deprived of due process, since the increase in welfare payments sought by them has less constitutional significance than the interest of appellants in *Boddie* v. *Connecticut*, 401 U. S. 371, and since evidentiary hearings provided a procedure, not conditioned on payment of any fee, through which appellants were able to seek redress. *United States* v. *Kras*, 409 U. S. 434. Nor is the filing-fee requirement violative of equal protection, since the applicable standard in the area of social and economic regulation when a suspect classification is not present is rational justification and here the requirement of rationality is met.

262 Ore. 375, 498 P. 2d 757, affirmed.

PER CURIAM.

Appellants contend that Oregon's $25 appellate court filing fee, as applied in this case, violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment and, also, the First Amendment as incorporated into the Fourteenth. The Supreme Court of Oregon decided otherwise. 262 Ore. 375, 498 P. 2d 757 (1972). We affirm that decision for reasons we found persuasive in *United States* v. *Kras*, 409 U. S. 434 (1973).

Appellant Ortwein (who also was receiving social security and an urban renewal allowance) sustained a reduction of approximately $39 per month in his Oregon old-age assistance when his county welfare agency determined that he shared shelter and expenses with another person in a manner that relieved him of some of the costs upon which his original award had been based.

Ortwein appealed to the Oregon Public Welfare Division. The Division conducted a hearing and upheld the county agency's decision.[1]

Appellant Faubion claimed that certain expenses related to work training under a federal program should have been deducted in calculating her income.[2] Most of these deductions were disallowed, after hearing, by the Public Welfare Division. The disallowance resulted in smaller welfare payments to Faubion over a five-month period.

---

[1] The Division found that the county agency "acted within its discretion by determining that the claimant's living arrangement represented a living situation in which shelter and expenses are shared." The agency's order explained that that reduction in the room and board allowance was proper because "[t]he eligibility of recipients who share shelter with non-recipients, and do not pay for room and board, shall be determined on a share/fraction basis at [Public Welfare Division] standards." Record 9. In his petition for review, Ortwein contended that the order was not supported by "reliable, probative and substantial evidence in the whole record."

[2] Faubion received an incentive training allowance of $120 per month for approximately five months from a program under the Manpower Development and Training Act of 1962, as amended, 76 Stat. 23, 42 U. S. C. §§ 2571–2574. Record 12. Faubion also was receiving over $210 per month through a state-administered AFDC program. Jurisdictional Statement 4; Record 11. States, in making their income calculations under AFDC, deduct from gross income all expenses "reasonably attributable" to the earning of the income. 42 U. S. C. § 602 (a)(7); 45 CFR § 233.20 (a)(3)(iv) (Sept. 1972). Faubion claimed that she had work-training expenses of $20 per month for essential clothing and grooming, of $20 per month for lunches on the job, of $30 per month for convenience foods for family use made necessary because of her job, of $5 per month for oil, tune-ups and repairs, and of $5 per month for miscellaneous school supplies. Record 13. Although the Division allowed some deductions, it determined that the remaining expenses were not "reasonably attributable" to the training program. Record 12. On appeal, Faubion sought to challenge this finding.

Judicial review of these agency decisions is authorized under state law. Ore. Rev. Stat. § 183.480 (1971). In cases that are contested, as these were, jurisdiction for judicial review is conferred upon the Oregon Court of Appeals. § 183.480 (2). All appellants in civil cases in Oregon pay a $25 filing fee in appellate courts. §§ 21.010 and 21.040 (1971). Each of the present appellants alleged that he was an indigent unable to pay the filing fee; each moved to proceed *in forma pauperis* in the Oregon Court of Appeals. The motions were denied without opinions. Appellants then petitioned the Supreme Court of Oregon for an alternative writ of mandamus ordering the Court of Appeals to accept appellants' cases without payment of fees. The Supreme Court of Oregon requested supplemental briefs and then issued its opinion denying the petition for mandamus. 262 Ore. 375, 498 P. 2d 757 (1972). From this denial the present appeal is taken.

I

Relying on this Court's opinion in *Boddie* v. *Connecticut*, 401 U. S. 371 (1971), and on the remand-for-reconsideration order in *Frederick* v. *Schwartz*, 402 U. S. 937 (1971),[3] appellants contend that the Oregon appellate filing fee, when applied to indigents seeking to appeal an adverse welfare decision, violates the Due Process Clause of the Fourteenth Amendment. In *United States* v. *Kras*, 409 U. S. 434 (1973), this Court upheld statutorily imposed bankruptcy filing fees against a constitutional challenge based on *Boddie*. We emphasized the special nature of the marital relationship and its concomitant associational interests, and noted that they were not affected in that case and that the objective sought by appellant Kras could be obtained through alternative

[3] See also *Huffman* v. *Boersen*, 406 U. S. 337 (1972).

means that did not require a fee. *Boddie*, of course, was not concerned with post-hearing review. We now conclude that *Kras*, rather than *Boddie*, governs the present appeal, and we emphasize that *Frederick* was remanded, and not summarily reversed.

A. In *Kras*, we observed that one's interest in a bankruptcy discharge "does not rise to the same constitutional level" as one's inability to dissolve his marriage except through the courts. 409 U. S., at 445. In this case, appellants seek increased welfare payments. This interest, like that of Kras, has far less constitutional significance than the interest of the *Boddie* appellants. Compare *Dandridge* v. *Williams*, 397 U. S. 471 (1970), and *Richardson* v. *Belcher*, 404 U. S. 78 (1971), with *Loving* v. *Virginia*, 388 U. S. 1 (1967); *Skinner* v. *Oklahoma*, 316 U. S. 535 (1942); *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), and *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972). Each of the present appellants has received an agency hearing at which it was determined that the minimum level of payments authorized by law was being provided. As in *Kras*, we see "no fundamental interest that is gained or lost depending on the availability" of the relief sought by appellants. 409 U. S., at 445.

B. In *Kras*, the Court also stressed the existence of alternatives, not conditioned on the payment of the fees, to the judicial remedy. *Id.*, at 446. The Court has held that procedural due process requires that a welfare recipient be given a pretermination evidentiary hearing. *Goldberg* v. *Kelly*, 397 U. S. 254, 264, 266–271 (1970). These appellants have had hearings.[4] The

[4] These evidentiary hearings, of course, must meet the minimal requirements of due process. *Goldberg* v. *Kelly*, 397 U. S. 254, 266–271 (1970). Appellants have alleged that the hearings were deficient in several ways, Jurisdictional Statement 9–10, but neither the record nor the opinion of the Oregon court provides support for these contentions.

hearings provide a procedure, not conditioned on payment of any fee, through which appellants have been able to seek redress. This Court has long recognized that, even in criminal cases, due process does not require a State to provide an appellate system. *McKane* v. *Durston*, 153 U. S. 684, 687 (1894); see *Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956); *District of Columbia* v. *Clawans*, 300 U. S. 617, 627 (1937); *Lindsey* v. *Normet*, 405 U. S. 56, 77 (1972). Under the facts of this case, appellants were not denied due process.[8]

II

Appellants urge that the filing fee violates the Equal Protection Clause by unconstitutionally discriminating against the poor. As in *Kras*, this litigation, which deals with welfare payments, "is in the area of economics and social welfare." 409 U. S., at 446; see *Dandridge* v. *Williams*, 397 U. S., at 485–486. No suspect classification, such as race, nationality, or alienage, is present. See *Graham* v. *Richardson*, 403 U. S. 365, 372 (1971). The applicable standard is that of rational justification. *United States* v. *Kras*, *supra*.

The purpose of the filing fee, as with the bankruptcy fees in *Kras*, is apparent. The Oregon court system incurs operating costs, and the fee produces some small revenue to assist in offsetting those expenses. Cf. Ore. Rev. Stat. § 21.590 (1971). Appellants do not contend that the fee is disproportionate or that it is not an effective means to accomplish the State's goal. The requirement of rationality is met.

---

[8] Appellants also claim a violation of their First Amendment right to petition for redress. Our discussion of the Due Process Clause, however, demonstrates that appellants' rights under the First Amendment have been fully satisfied.

III

Relying on *Lindsey* v. *Normet, supra,* appellants contend that the fee is not required of certain classes of litigants, and that an appeal is thus "capriciously and arbitrarily denied" to other appellants, such as themselves, also in violation of the Equal Protection Clause. See 405 U. S., at 77. They assert that criminal appeals, habeas corpus petitions from state institutions or civil commitment proceedings, and appeals from terminations of parental rights may be filed *in forma pauperis* in the Oregon Court of Appeals. Jurisdictional Statement 23. We are not told just why these filings are permitted, but the opinion of the Supreme Court of Oregon makes it clear that *in forma pauperis* appeals are allowed only if supervening law requires a right to a free appeal. 262 Ore., at 384, 498 P. 2d, at 761–762.

If the Oregon courts have interpreted the applicable law to give special rights in the criminal area, in civil cases that result in loss of liberty, and in cases terminating parental rights, we cannot say that this categorization is capricious or arbitrary.

Affirmed.

MR. JUSTICE STEWART dissents, believing that the doctrine of *Boddie* v. *Connecticut,* 401 U. S. 371 (1971), requires reversal of this judgment. See *United States* v. *Kras,* 409 U. S. 434, 451 (1973) (dissenting opinion). He is convinced, however, that the Court is so resolutely firm in its contrary view that it would serve no useful purpose to set this case for oral argument.

MR. JUSTICE DOUGLAS, dissenting.

The majority today broadens and fortifies the "private preserve for the affluent." *Meltzer* v. *C. Buck Le Craw & Co.,* 402 U. S. 954, 961 (opinion of DOUGLAS, J.).

The Court upholds a scheme of judicial review whereby justice remains a luxury for the wealthy.

I

Appellants, welfare recipients whose benefits were reduced after adverse determinations by the Oregon Public Welfare Division, were denied access to the Oregon courts for review of those decisions solely on the grounds that they were unable to pay a $25 filing fee. Judicial review of administrative decisions is not otherwise available under Oregon law. I continue to believe that this invidious discrimination against the poverty-stricken—a classification based upon wealth—is proscribed by the Equal Protection Clause of the Fourteenth Amendment. *Meltzer, supra; Boddie* v. *Connecticut*, 401 U. S. 371, 383 (DOUGLAS, J., concurring in result); cf. *United States* v. *Kras*, 409 U. S. 434, 457 (opinion of DOUGLAS and BRENNAN, JJ.).

There is an additional consideration relevant here. The majority properly notes that "[t]his Court has long recognized that, even in criminal cases, due process does not require a State to provide an appellate system." We are concerned in this case not with appellate review of a judicial determination, but with *initial access* to the courts for review of an adverse administrative determination. By analogizing these two situations, the majority *sub silentio* answers a question this Court studiously has avoided—whether there is a due process right to judicial review. See 4 K. Davis, Administrative Law Treatise § 28.18. Access to the courts before a person is deprived of valuable interests, at least with respect to questions of law, seems to me to be the essence of due process. Cf. *Lindsey* v. *Normet*, 405 U. S. 56, 84 (DOUGLAS, J., dissenting in part). We have recognized that token access cannot satisfy the requirements

of due process. See, *e. g.*, *Mullane* v. *Central Hanover Trust Co.*, 339 U. S. 306. Certainly, no access at all cannot stand in better stead. Appellant Ortwein contends that the order of the Public Welfare Division is not supported by substantial evidence; appellant Faubion contends that the order applicable to her conflicts with federal provisions. Moreover, each contends that the administrative hearing was deficient under *Goldberg* v. *Kelly*, 397 U. S. 254, because questions of law were not considered. The majority affirms the judgment without discussing its bearing on appellants' contention that the Oregon scheme of judicial review discriminates against the poor with respect to an exercise of a fundamental right.

Accordingly, I cannot agree that a "rational justification" will support the Oregon statute as it affects the poor. The primary justification by the State and fixed upon by the majority is the State's interest in offsetting the expenses of its court system. This interest falls far short of the "compelling interest" required to justify a suspect classification or discrimination which infringes on fundamental rights. *See Boddie* v. *Connecticut, supra,* at 382; *Shapiro* v. *Thompson,* 394 U. S. 618, 633.

II

The majority affirms the judgment below without the benefit of briefs or argument, relying on *United States* v. *Kras, supra.* Although I did not join the Court's opinion in *Boddie* v. *Connecticut, supra,* I am compelled to comment on the propriety of disposing of this case summarily in view of the decision in that case. However one views the merits of *Kras,* it seems to me that this case falls far closer to *Boddie* than *Kras.*

The majority distinguished *Kras* from *Boddie* on three

grounds. It is only proper that this case be compared on the same basis.

(1) The majority in *Kras* concluded that a debtor's desire to obtain a discharge in bankruptcy does not implicate a "fundamental interest." While it is true that our decisions attach less constitutional significance to welfare payments than the interests of the *Boddie* appellants, we have never decided that there is no constitutional right to judicial review of an adverse administrative determination. The majority also noted in *Kras* that "[g]aining or not gaining a discharge [in bankruptcy] will effect no change with respect to basic necessities." 409 U. S., at 445. It is clear in this case, however, that appellants suffered an inroad on their ability to subsist.

(2) Unlike Kras, who had a theoretical opportunity to seek relief from his creditors in a nonjudicial accommodation, appellants' only avenue of relief lies in the courts.

(3) Unlike Kras, who was afforded the opportunity to pay the bankruptcy filing fee in installments over six months, appellants must file their fee in a lump sum.

MR. JUSTICE BRENNAN, dissenting.

Although I am in substantial agreement with my Brothers DOUGLAS and MARSHALL that this case is distinguishable from our recent decision in *United States* v. *Kras*, 409 U. S. 434 (1973), I see no reason to set this case for argument in light of the majority's firmly held view that *Kras* is controlling. On the merits, I would reverse for the reasons stated in my separate opinion in *Boddie* v. *Connecticut*, 401 U. S. 371, 386 (1971) (concurring in part). See also *United States* v. *Kras*, *supra*, at 457 (opinion of DOUGLAS and BRENNAN, JJ.).

MR. JUSTICE MARSHALL, dissenting.

I adhere to my dissenting opinion in *United States* v. *Kras*, 409 U. S. 434, 458 (1973), and would reverse the judgment on that basis. But even were I to accept the majority position in *Kras*, there are still important differences between that case and this one which, in my judgment, require that this case be set for argument.

In *Kras*, the majority correctly noted that "[t]here is no constitutional right to obtain a discharge of one's debts in bankruptcy." *Id.*, at 446. Therefore, the only issue in the case was whether the Government could, on the basis of a *de facto* wealth classification, limit access to a remedy which it could concededly deny altogether.

The question here is quite different. Appellants seek a judicial remedy for the action of an administrative agency which deprived them of a pre-existing right. As my Brother DOUGLAS demonstrates, it is at very least doubtful that the Due Process Clause permits a State to shield an administrative agency from all judicial review when that agency acts to revoke a benefit previously granted.* I share the view of Mr. Justice Brandeis that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted

*The majority's statement that "[t]his Court has long recognized that, even in criminal cases, due process does not require a State to provide an appellate system," *ante*, at 660, is thus true, but irrelevant and misleading. The cases cited by the majority all involve efforts to secure appellate review of a decision by a lower court. Here, in contrast, no court has ever examined appellants' claims on the merits. Appellants assert only that they must have *some* access to *some* court to contest the legality of administrative action adversely affecting them.

regularly." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 84 (1936) (concurring opinion). Cf. *Yakus* v. *United States*, 321 U. S. 414 (1944); *Crowell* v. *Benson*, 285 U. S. 22 (1932).

That opportunity was denied in this case, and important benefits were thereby taken from appellants without affording them a chance to contest the legality of the taking in a court of law. Cf. *Fuentes* v. *Shevin*, 407 U. S. 67 (1972).

The extent to which the State may commit to administrative agencies the unreviewable authority to restrict pre-existing rights is one of the great questions of constitutional law about which courts and commentators have debated for generations. See generally Hart, The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362 (1953); 4 K. Davis, Administrative Law Treatise § 28.18 (1958). Because I am not ready to decide that question summarily, *sub silentio*, and without the benefit of full briefing and oral argument, I must dissent from the Court's decision.